IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPEAL NO.74 OF 1995

The State of Maharashtra .. Appellant
(Org. Complainant)

Vs.

Maruti Gulabrao Bhosale
age 35, r/o Bawadhan, Tal.Wai,
Dist. Satara. .. Respondent
(Org. Accused)

WITH

CRIMINAL REVISION APPLICATION NO. 3 OF 1995

Niwaruti Sahebrao Pisal .. Appellant

Vs.

1. Maruti Gulabrao Bhosale
2. The State of Maharashtra .. Respondents

Mr. D.R. More, APP for Appellant-State.
Mr. R.S. Kate for Respondent-Accused.
None for the revision applicant.

CORAM: S.S. PARKAR & ANOOP V. MOHTA, JJ.

Date : April 28, 2005.

ORAL JUDGMENT (PER S.S. PARKAR,J.):

1. This appeal and the revision application are filed by the State and the first informant respectively challenging the judgment and order dated 15/11/1994 delivered by the IInd Additional Sessions Judge, Satara, acquitting the respondent-accused of

the offence of murder in Sessions Case No.121 of 1989.

2. Briefly narrated the prosecution case is as follows:-

. The incident of assault had taken place in front of the house of deceased Balasaheb Niwrutti Pisal on the night of 21/5/1989 at about 9 p.m. The deceased had just returned from his work. His house is situated at a distance of about half furlong from village Bawdhan. It was a joint family where deceased Balasaheb was residing along with his father, sister, brothers and his and his brothers' families. Balasaheb was working as a driver on the truck owned by one Udaysingh of Kolhapur. One Popat Bhosale was working as cleaner on the said truck. Popat Bhosale expired in a truck accident run by deceased in Ahmedabad about one year before the incident. The family of deceased Popat had received compensation and prosecution was pending against the deceased for the rash and negligent driving. The accused who was the brother of Popat used to ask for money from Balasaheb and hold out threats to him. On the night of the incident, after Balasaheb returned home, accused came near his house and called out Balasaheb. Balasaheb's sister Sangita went to the door of their house and

asked the accused to come inside the house, but accused wanted Balasaheb to go out of his house. Accordingly, Sangita told Balasaheb and, therefore, Balasaheb went out. Balasaheb's father also followed him. As soon as Balasaheb went out, accused assaulted Balasaheb with some weapon on his neck and abdomen and started running away. Seeing the assault on his son, complainant Niwrutti chased him and tried to stop him by holding his leg but the accused managed to escape. Balasaheb having sustained injuries fell down near the western side door of his house. Complainant then went to village Bawdhan to bring vehicle, where he met his another son Ramesh near the office of Talathi. Niwrutti told Ramesh about the incident. He also met Chandrakant Pisal P.W.10 and told him about the assault. The truck of Ashok Kadam was arranged and Balasaheb was removed to Mission Hospital at Wai, where he was declared dead. Niwrutti, the father of deceased, therefore, lodged F.I.R. at Wai Police Station which is Exh.32. The blood stained shirt of complainant was attached by the police. Immediately the statements of Sangita, sister of the deceased, as well as Sachin, the son of deceased were also recorded. Accused was arrested same night at about 12.30 a.m. The blood stained clothes from the person of the accused were seized under panchanama. Inquest

panchanama Exh.10 was drawn on the dead body. The dead body was sent for post mortem examination. The post mortem on the dead body was performed following morning. While in custody, on 25/5/1989, the accused volunteered to produce the knife with which he had assaulted the deceased. The clothes of the deceased were also seized. Spot panchanama Exh.11 was drawn. The clothes of the deceased, blood stained earth collected from the spot, clothes of the accused and the complainant Niwrutti as well as knife (Article 12) were sent to the office of C.A. for examination. After completion of the investigation, charge-sheet was filed against the accused for offence of murder.

3. The case was committed to the Sessions Court, where charge for offence under Section 302 of IPC was framed against the accused, to which he pleaded not guilty. On behalf of the prosecution 12 witnesses were examined. P.Ws. 3, 4 and 5 are the father, sister and son of the deceased who were examined as eye witnesses to the incident. Deceased's brother Ramesh was examined as P.W. 9. P.W. 6 is Dr. Pandhare who had performed autopsy on the dead body. P.Ws. 1 and 2 are the panch witnesses. P.W.1 Suresh Pisal had acted as panch for attachment of the clothes

of the accused, while P.W.2 Laxuman Kadam had acted as panch for the recovery of knife at the instance of the accused. P.W. 7 is Mohan Kadam in whose truck injured Balasaheb was taken to the hospital at Wai. P.W. 8 is Vishwas Pisal who has deposed about the demand of money made by the accused from the deceased. P.W. 10 is Chandrakant Pisal, who had also deposed about the demand made by the accused from the deceased on the day of the incident. P.W. 11 is Chandrakant Yadav, the neighbour of the deceased, who had come out along with his wife after hearing commotion and seen deceased in injured condition lying in front of his house. P.W. 12 is PSI Dipak Jatakar, who had investigated the case. The defence of the accused was of denial. According to him he was arrested on mere suspicion. Though in his 313 statement he had stated that he wanted to examine defence witness, no witness was examined on behalf of the accused.

4. After considering the evidence on record, the trial Judge by his impugned judgment and order acquitted the respondent-accused, which is under challenge in this appeal filed by the State.

5. While the APP assailed the reasoning of the trial Judge as being perverse and unsustainable in law, the defence advocate contended that there was no motive for the offence in as much as, as per the admission by the complainant, the accused had already received compensation of Rs.55,000/- and, therefore, there was no question of accused asking for money from the deceased. Secondly he argued that when the deceased fell down because of the assault, there was no question of there being trail of blood which was noticed between eastern and western doors of the house of the deceased as referred to in the spot panchanama. Thirdly, he made reference to the discrepancy about the doctor stating that the post mortem was performed in Wai Hospital but on the post mortem notes dispensary Wai was scored out and instead Primary Health Centre, Bawdhan was written as the place where post mortem was performed. Lastly he argued that considering the size of the knife used by the accused it cannot be said that there was intention on the part of the accused to murder the deceased.

6. Apart from going through the entire evidence on record, this being an appeal against the order of acquittal, we also perused the reasoning of the trial

court and find the same not at all sustainable in law. The defence advocate did not raise any point in support of the order of acquittal based on the basis of the reasoning of the trial court. What we find is that the trial court has tried to pick up tiny straws in support of the order of acquittal without there being any substance.

7. The incident had taken place at the night time between 8.45 p.m. and 9 p.m. when the three eye witnesses i.e. complainant Niwrutti P.W.3, the father of the deceased, Sangita P.W.4, the married sister of the deceased and Sachin P.W.5, the son of the deceased were present, who had seen the incident. As per the evidence of the eye witnesses P.W.3 Niwrutti, P.W.4 Sangita and P.W.5 Sachin they were in the house at the time of the incident. Some time after the return of deceased Balasaheb accused came and called out Balasaheb. Sangita, who was at that time in the outer room of the house, went out to see who was calling Balasaheb. She saw accused in the moon light. She was knowing him and, therefore, she called him inside as Balasaheb was taking his meal. But accused asked her to send Balasaheb out. She accordingly told Balasaheb. Therefore, Balasaheb went out of their

house from the eastern side door, followed by father Niwrutti and sister Sangita. The third eye witness Sachin, a young boy, was at that time standing on the stairs in front of the door of the house. As soon as Balasaheb went out accused assaulted him on his neck and abdomen and tried to run away. Niwrutti rushed to the accused and caught hold of his leg but he escaped. Niwrutti tried to chase him upto some distance. Balasaheb fell down just in front of the western side door of his house. It may be mentioned here that as per the map Exh.20 the house of the complainant had two doors in the front, one on the eastern side and another on the western side. The fact that there was trail of blood found between eastern side and the western side door would indicate that assault was made in front of the eastern side door when Balasaheb went out from that door and then he must have gone towards the western side door where he ultimately fell down. The defence advocate, therefore, contended that the prosecution cannot be believed because according to the evidence of the complainant Balasaheb had fallen down immediately at the place of incident. But perusal of the evidence of complainant P.W.3 does not show that complainant had stated so. What he has stated is that after giving the blows with knife accused began to run away and he tried to stop him.

He stated that Balasaheb had fallen down near western side door and he took him in his hands for a moment and then chased the accused.

8. All the three eye witnesses have corroborated each other. They are the natural witnesses. They are the inmates of the same house and all the three witnesses had seen the accused. The time of the incident being night time, Sangita, being a lady and Sachin, being a teenager, who must be at that time hardly 10 years old, were expected to be in the house. His age while giving evidence in September, 1995 has been given as 15 years. Even the complainant who was in his sixtees was expected to be in the house at that time. These three eye witnesses seem to have had already their dinner because deceased who had returned at about 8.45 p.m. was taking his meal when the accused came and called him out. The accused was known to all of them. After the assault, the deceased was taken to the Mission Hospital at Wai which is hardly 5 kms. from the place of the incident, where he was declared dead. The injured had reached hospital at about 10 p.m. after arrangement was made for the truck. Thereafter the F.I.R. Exh.32 was immediately lodged and the crime was registered at

10.15 p.m. In the said complaint the name of the accused was mentioned as a person who had assaulted the deceased with a weapon. It is important to bear in mind that his name would not have been given in the F.I.R. unless he was seen by the complainant and others. The boy Sachin was already standing outside the house on the stair case. Sangita had come to call Balasaheb at the request of the accused and, therefore, there is no question of making any mistake. Accused was known to the witnesses and deceased having been assaulted and having received injuries when he went out to see the accused at the latter's call, there can be no question of any other person assaulting the deceased. The complaint which was filed immediately after the incident makes a mention about the motive also that deceased had told his father Niwrutti that accused had held out threat to him. Apart from there being the evidence of motive, the evidence of eye witnesses was also corroborated by the medical evidence as well as recovery of blood stained clothes of the accused and the blood stained knife (Article 12) recovered at his instance. There was no time for concoction. It is hardly likely that the father of the deceased would think of falsely implicating the accused for the murder of his son if he had not seen the assailant.

9. Prosecution has also examined the truck owner Mohan Kadam as P.W.7. He has deposed that he knew deceased Balasaheb, who was working as a driver on his truck as well as deceased Popat who was working as a cleaner on his truck. He has also deposed that Popat Bhosale expired in an accident of the truck on the road. He had taken his truck on the request of Ramesh, the brother of the deceased, to his house and taken injured Balasaheb to Hospital at Wai. P.W.8 Vishwas Pisal was also knowing the accused as well as the deceased. He was examined on the point of demand. According to him 4 months before the incident in question accused had demanded money from Balasaheb on account of the death of Popat and he had given threat to Balasaheb in case he did not pay the money. P.W. 10 Chandrakant Pisal has also deposed about the demand made by the accused from Balasaheb for money about four months before the incident. These are the witnesses who had corroborated the evidence of complainant on motive. Even without their corroboration there can be no difficulty in accepting the evidence of complainant about the threat held out by the accused in connection with the death of his brother Popat in the accident of the truck driven by deceased Balasaheb, mention of which is made in the

complaint itself lodged within one hour after the incident. P.W.11 Chandrakant Yadav is a neighbour of the deceased. His evidence goes to show that he had come out of his house after hearing the commotion in the night. He came out along with his wife when he saw deceased lying injured near his house. Thus, his evidence corroborates the evidence of complainant that Balasaheb was lying injured near his house, which means that Balasaheb must have been assaulted in front of his house as deposed to by the three eye witnesses.

10. It is important to note that as the name of the accused was mentioned in the F.I.R. lodged and registered at about 10.15 p.m. same night, he was arrested at 12.30 a.m. on that very night. He was wearing the blood stained clothes which were attached under the panchanama Exh.23, proved by the panch Suresh Pisal P.W.1. He has deposed that the said panchanama was drawn at 12.30 on the night of the incident. He has deposed that accused was wearing white shirt, on which there were blood stains. He has also deposed that accused was wearing the pant and the banian, which were also blood stained, which were removed and seized under panchanama Exh.23. As per the C.A. report dated 31/8/1989 Exh.19 shirt of the accused was stained with blood group "B" which was

also found on the clothes of the deceased, while his pant and banian/bandi were found stained with human blood. It is significant to note that even the clothes of the complainant, the father of the deceased, were also attached which were blood stained as he had lifted the deceased for taking him in the truck and, therefore, his shirt was also found stained with blood of group "B" like the deceased and the accused.

11. Then there is recovery of knife at the instance of the accused, which is proved by panch Laxuman Kadam P.W.2. The said witness has proved the memorandum of statement Exh.25 and the recovery panchanama Exh.26 dated 25/5/1989. The knife was kept in an oil tin in which pulses (chawli grams) were kept. The said tin was kept on the wall in the house of the accused. That knife was also found blood stained. Some of the chawli grams kept in the tin in which the blood stained knife was kept were also stained with blood. Therefore, under seizure panchanama Exh.26, apart from the knife (Article 12), blood stained chawli as well as chawli without blood stains were also attached and were sent to C.A. for examination. As per the above C.A. report the knife was found stained with blood of group "B" which was

also found on the clothes of the deceased. Similarly blood stained chawli grams were found stained with blood of group "B" and no blood was found on other chawli grams. The accused has not given explanation about the finding of blood on his clothes as well as on the knife and the chawli. Recovery of blood stained knife as well as attachment of blood stained clothes from the person of the accused at the time of his arrest which were stained with blood of the group of the deceased are other two strong circumstances corroborating the evidence of the eye witensses. Simple denial by the accused in his 313 statement about the above circumstances as false does not help the accused. It is significant to note that the chawli grams from the tin in which the knife was kept were also found stained with blood of "B" group. This circumstance assures the court that the recovery of the blood stained knife at the instance of the accused under Section 27 cannot be doubted.

12. The accused in his 313 examination has stated that there was no moon light on the date of the incident with a view to show that eye witnesses could not have identified the assailant of the deceased. First of all the accused was known to the witnesses and had come near the house of the deceased and,

therefore, it was possible to identify him in the light which emanates from the light which was in the house. Secondly, the I.O. had made enquiry in this respect and in his evidence deposed that he had ascertained from the almanac that 21st May 1989 was a full moon day. It was, therefore, easier to identify in full moon light a known person who was standing just outside the door of the house of the witnesses.

13. Thus, the prosecution has proved the motive. Secondly, there is evidence of three eye witnesses. Apart from the complainant's evidence, the statements of other two eye witnesses were recorded on the same night immediately after the F.I.R. was lodged. The accused was known to the witnesses whose name was mentioned in the complaint. The complaint also mentions the motive about the previous threat held out to the deceased by the accused. The circumstance of motive is corroborated by the other witnesses. The accused who was arrested same night was wearing blood stained clothes on which blood of the group of deceased was found. There is a recovery of blood stained weapon at the instance of the accused from his own house hidden in a tin containing chawli grams. The chawli grams as well as knife were stained with

blood of group "B". The evidence of eye witnesses is corroborated by the medical evidence. The accused was known to the witnesses and there was full moon light on the night of the incident. The name of the assailant was disclosed by the complainant Niwrutti to his son Ramesh P.W. 9 and P.W. 10 Chandrakant Pisal. The evidence of the eye witnesses is also corroborated by the spot panchanama Exh.11 in which the blood trail was shown from the eastern side door to the western side door where the body was lying in front of the house of the deceased. The aforesaid evidence leaves us in no manner of doubt that it was the accused who had on the night of the incident assaulted the deceased which resulted in his death.

14. P.W. 6 Dr. Pandhare had performed post mortem examination on the dead body. According to him the deceased had two main injuries on his body, one was punctured wound in the neck on the left side above clavicle of the size of 3/4" x 1/4" x 3" and the second injury was punctured wound on the left side of the abdomen, 3 away from ambiliquor. It admeasured 1/2" x 1/4" x 2". According to the doctor both the injuries were grievous and ante mortem. Because of the injury no.1 there was destruction of vessels and surrounding tissues and clotted blood was found.

Injury no.1 was dangerous and sufficient in the ordinary course to cause death. The cause of death was given as coma and severe haemorrhage due to severe injuries to vital organs i.e. on neck and abdomen. The said injuries were possible by knife (Article 12) which was shown to the doctor. The evidence of Medical Officer does not leave doubt that the deceased had received homicidal death. Medical evidence also corroborates the evidence of eye witnesses. As regards the medical evidence, the defence advocate argued that according to the evidence of doctor, he had performed post mortem examination at Wai Hospital where the injured was taken initially, but the post mortem report Exh.15 shows that at the top of the report the dispensary at Wai was scored out and instead Primary Health Centre, Bawdhan was mentioned on Exh.15. The evidence of the doctor cannot be discarded on that ground. His evidence as regards the injuries was not challenged. The scoring out dispensary, Wai at the top of post mortem report Exh.15 and instead writing Primary Health Centre, Bawdhan seems to have been done because P.W.6 was Medical Officer of Primary Health Centre, Bawdhan. That is why at the end of the report the doctor has put his stamp and signed it showing that he was Medical Officer attached to Primary Health Centre,

Bawdhan. He has categorically said that he was attached on that day to Primary Health Centre, Bawdhan. If the said fact had been brought to the notice of the doctor surely he would have explained it as to why it was done and by whom it was done. But the fact that the printed form of the Wai Municipal Dispensary was used for preparing post mortem report shows that post mortem examination was performed in Wai dispensary.

15. This leaves us to consider the reasoning of the trial court, it being an appeal against the order of acquittal. From the discussion of the evidence there can be no doubt about the proof of guilt of the accused in respect of the murder of deceased Balasaheb Pisal. The trial Judge has given reasoning to acquit the accused which does not stand the test of rationality or reasonable doubt. In paragraph 14 of the judgment the trial Judge has observed that if the accused was really interested to commit any act against the deceased he would have availed the opportunity of murdering him away from his house as P.W. 10 has deposed that on the earlier day of the incident he had seen the accused talking to the deceased, though that evidence has not been accepted by the trial court. As regards the attachment of the

blood stained clothes of the accused, the trial Judge has referred to the omission in the police statement about the description of the clothes on the person of the accused by eye witnesses Niwrutti, Sangita and Sachin as they had not specifically mentioned as to the clothes worn by the accused. In our opinion that was not necessary when the accused was known and named in the complaint lodged about an hour after the incident in question.

16. The trial Judge has also not relied on the circumstance of blood stained clothes of the accused on the ground that the blood group of the accused was not known. The blood of the accused was sent to the C.A. but as per the C.A. report dated 31/8/1989 Exh.18 the blood group could not be determined as the results were inconclusive. It is not the defence case that there were injuries on the person of the accused and that his blood group is also "B". When the blood was found on the clothes of the accused he owes an explanation regarding the same. It is well settled that even if human blood is found on the clothes of the accused he owes an explanation in the absence of which it is a circumstance which can be used against the accused and, therefore, when blood of group "B" was also found on the clothes of the deceased, surely

the accused had to offer an explanation in the absence of which it is a circumstance going against the accused.

17. The trial Judge has also observed that since the compensation of Rs.55,000/- was awarded in respect of the death of brother of the accused, there was no motive proved against the accused. In our opinion since there is evidence of three eye witnesses, there is no necessity to prove the motive. Moreover, the trial Judge forgot that Rs.55,000/- was given to the heirs of the deceased i.e. his wife and children and the prosecution against the deceased was still pending and, therefore, it cannot be said that the accused could not have made any demand for money from the deceased.

18. The recovery evidence is also not believed by the trial court on the ground that the panch stated that accused did not get down from the jeep before making statement or at the time of making statement. Even in the absence of the panch witness, the court can rely on the evidence of I.O. unless the accused gives good reason to disbelieve the evidence of I.O. Reference may be made in this connection to the judgment of the Supreme Court in the Case of State,

Govt. of NCT of Delhi vs. Sunil and anr. reported in **(2001) 1 SCC 652**. The recovery of blood stained knife from a tin containing chawli grams, some of which were also found stained with same blood group as of deceased because of coming into contact with the knife (Article 12) lends assurance to the court of the truthfulness of the recovery of knife at the instance of the accused.

19. The trial court has observed that the house of the accused being very small and the search of his house having been taken on 22/5/1989 the police could have noticed the knife kept in the house. In our view that search must not have been taken so minutely that even tins of the kitchen containing pulses and cereals would be opened and searched to find out whether the weapon was kept in them. Normally the weapon used for murder is big which cannot be kept in a small tin. No one had clearly seen the weapon in the hands of the accused, nor witnesses have stated how big was the weapon used by the accused. Even the F.I.R. refers to the weapon used by the accused but the name of the weapon was not given. The weapon is so small that it was difficult to notice in the night when the incident took place. The blade of the knife is 5 cms. and after opening it along with the handle the total

length of the weapon given is 11 cms. Therefore, even in open condition also it was difficult to see the knife clearly. The police must not have expected that the knife could be kept in the tin containing the chawli grams. Therefore, the said reasoning of the trial court also does not at all appeal to reason.

20. The trial Judge has then referred to the evidence of witnesses and pointed out the discrepancy about the holding of the knife by the accused. P.W.4 Sangita in her cross-examination has stated that knife was in the right hand of the accused while P.W.5 Sachin has only stated that accused had knife in his hand and complainant P.W.3 did not state that accused was having knife in his hand. In fact, the complainant referred to weapon and not knife. In our opinion because of the said discrepancy the evidence of the eye witnesses cannot be disbelieved.

21. The trial Judge has then observed that the presence of the accused near the house of the deceased was not expected because of the previous threat and, therefore, when he came there to call Balasaheb, the latter would not have gone to see him carelessly. Then it is observed by the trial Judge that the witnesses would not have allowed the victim to go out

unless they had enquired about the purpose of his coming there and, therefore, the witnesses are suppressing the truth. The trial Judge has also observed that if the accused had wanted to kill the deceased he would not have come there with small knife which is unnatural. As it is, the use of that small knife (Article 12) could take away the life of the deceased. Even a shaving blade is enough to kill a person if it is applied on the neck. The accused in this case had pierced the knife in the neck of the deceased which resulted in the ruptured of the veins and the tissues and therefore the blood had oozed out and deceased died. In similar fashion the accused had pierced the knife into the abdomen of the deceased. The trial court has acquitted the accused on flimsy grounds. The trial court has also gone by the minor discrepancies in the evidence of three eye witnesses which in our view cannot be used to discard the evidence of natural eye witnesses which is otherwise corroborated by various circumstances as pointed out above. The trial court has also observed that the high percentage of ethyl alcohol was found in the viscera and blood of the victim and, therefore, it is likely that he might have picked up a quarrel with some other person because of the liquor and that person might have assaulted the victim. The learned

Judge forgot that there can be hundreds of possibilities but what the court has to consider is whether there is a possibility or not of the murder being committed by the accused in the manner as deposed to by the eye witnesses.

22. Since the ocular evidence is corroborated by the immediate complaint, the medical evidence and the recovery of blood stained clothes of the accused and the blood stained knife at the instance of the accused, there can be no doubt about the guilt of the accused. The reasoning of the trial court is illegal and cannot at all be justified by the evidence on record. The learned trial Judge has found some excuses and pretexts to acquit the accused in the teeth of overwhelming and absolutely reliable ocular evidence which is corroborated and supported by other circumstances. The order of the trial court, therefore, cannot sustain in law. The order of acquittal recorded by the trial court is undoubtedly perverse and, therefore, will have to be set aside.

23. In the result, appeal is allowed. The order of acquittal of the respondent-accused recorded by the IInd Additional Sessions Judge, Satara on 15/11/1994 in Sessions Case No.121 of 1989 is set aside and the

respondent-accused is convicted for offence under Section 302 of IPC and sentenced to RI for life and to pay a fine of Rs.5000/- in default to suffer further imprisonment for one year.

. In view of the aforesaid order, the Revision Application No.3 of 1995 filed by the first informant does not survive and shall stand disposed of.

. On the application of Mr. Kate, respondent-accused is given three weeks time to surrender to his bail bonds.

(S.S. Parkar, J.)

(Anoop V. Mohta,J.)